

PYRAMID LAKE PAIUTE TRIBE,	:	Order Vacating Decision and
Appellant	:	Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 92-172-A
ACTING PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 21, 1992

Appellant Pyramid Lake Paiute Tribe seeks review of an April 28, 1992, decision issued by the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a fiscal year 1992 Planning Grant. For the reasons discussed below, the Board of Indian Appeals (Board) vacates the Area Director's decision, and remands this case for further consideration.

The availability of funding for the fiscal year 1992 Planning Grant program was announced in the Federal Register on January 2, 1992. 57 FR 160. Appellant submitted an application pursuant to that announcement. By letter dated April 28, 1992, the Area Director informed appellant that its

application did not rank high enough among the twelve tribal applications received to be considered for a grant under the terms of the announcement. The application was weak or deficient in these areas:

Under (2) eligibility criteria, of the announcement, the Tribe's plan did not reflect:

(a) Its willingness to accept guidance and assistance for any modifications to its comprehensive development plan from subject matter experts.

(b) A detailed description of how grant funds would be used in coordination with, or to supplement other bureau grants and/or contracts, or other capacity building grants from other agencies.

(Decision Letter at 1).

Under section C(2), Eligibility Criteria, the Federal Register publication states at page 162:

(b) When a tribe is requesting a planning grant which encompasses activities identified as reservation resources development, the tribe must also satisfy one (1) or more of the following additional conditions:

(i) The tribe has successfully administered other developmental projects and has done so without governmental or political interference;

(ii) The tribe's plan reflects its willingness to accept guidance and assistance for the modification, if necessary, of its comprehensive development plan from subject matter experts; and/or

(iii) The tribe's plan reflects its willingness to accept monitoring and technical assistance as may be arranged by subject matter experts to ensure the best opportunity for success of the grant activity.

Appellant contends that it was not required to satisfy all three of the enumerated conditions. The rating sheets for appellant's application show that appellant satisfied both (2)(b)(i) and (2)(b)(iii).

The Board agrees that the Federal Register guidelines did not require that each of the three conditions be satisfied. It was error to find the application weak or deficient because appellant did not satisfy all three conditions. 1/

The Area Director also found the application weak or deficient in that it did not describe how grant funds would be used in coordination with, or to supplement, other grants and contracts. Appellant states:

No other grant funds will be used in the position of Tribal Planner and secretary, therefore this issue was not addressed in grant proposal. The Tribal Planner will work with many Tribal employees, some of whom could be working under grant programs. The Planner will, however, work independently, under the supervision of the Tribal Chairman, with monies for the Planning Program coming from the Planning Grant Program.

Because predictions of activities on the part of the Tribal Planner are extremely difficult to include in a grant proposal, only known, concrete responsibilities of the Planner and secretary were addressed in the proposal; speculations on activities were not included.

(Notice of Appeal at 2).

Section C(4)(d) of the Federal Register notice provides at page 163 that an application must contain "[a] detailed description of how grant

1/ It is possible that other tribes satisfied all three conditions, and that appellant's application was rated lower because it satisfied only two conditions. If this were the case, it was not conveyed in the Area Director's decision. The guidelines also did not indicate that the number of conditions satisfied would be considered.

funds will be used, if applicable, in coordination with, or to supplement, other Bureau grants and/or contracts or other capacity building grants from other agencies." Appellant was on notice that its application should contain this information, if it applied. Appellant could reasonably have been expected to state in its application if funding from the Planning Grant program would not be used in coordination with, or to supplement, funding from other sources. Appellant's failure to do so could reasonably be interpreted by the Area Director as a deficiency in its application. Cf. Tunica-Biloxi Tribe v. Deputy Commissioner of Indian Affairs, 22 IBIA 43 (1992) (holding that an applicant for funding under the Small Tribes Program should have reasonably understood that documentation in support of its narrative/needs statement would strengthen its application without this fact being specifically stated in the program guidelines).

The Board thus holds that the Area Director's first ground for finding appellant's application weak or deficient was improper. However, the Board is unable to determine from the administrative record whether appellant's application would have been approved, but for consideration of the invalid first reason. The Area Director's decision must be vacated, and this matter remanded to him for a determination of whether, without consideration of the invalid first reason, appellant's application would have been approved or denied. If he concludes that appellant's application would have been approved, the Area Director shall further determine an appropriate remedy, if, as the Board assumes, funds for the fiscal year 1992 Planning Grant Program have all been distributed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Phoenix Area Director's April 28, 1992, decision is vacated, and this matter is remanded to him for further consideration in accordance with this opinion.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge